Supreme Court of the United States

OCTOBER TERM, 1944.

No. 632

GRACE LINE INC.,

Petitioner,

against

CUBA DISTILLING COMPANY, INC., and
DEFENSE SUPPLIES CORPORATION,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF.

ROBERT S. ERSKINE,
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Pandick Press, Inc., 22 Thames St., New York 6, N. Y., U. S. A.

CONTENTS.

AUTHORITIES.

Supreme Court of the United States

GRACE LINE INC.,
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October Term, 1944.
No. .....

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioner, Grace Line Inc., respectfully prays for a writ of certiorari to review the decree herein, in Admiralty, of the United States Circuit Court of Appeals for the Second Circuit entered July 28, 1944, which affirmed an interlocutory decree of the United States District Court for the Southern District of New York. R. 328.

Jurisdiction of this Court is provided by 28 U. S. C. §347(a).

THE SUBJECT MATTER.

This case arose from a wartime collision between the American steamer *Lara*, owned by the petitioner, and the American steamship *Cassimir*, owned by the respondent, Cuba Distilling Company, Inc., which occurred at night

at sea off the North Carolina coast on February 26, 1942. The *Lara* was damaged; the *Cassimir* sank and became a total loss. The *Cassimir's* cargo, owned by the respondent, Defense Supplies Corporation, was also lost. The *Cassimir's* watch officer and six other crew members lost their lives.

The Collision.

The southbound *Lara,* a freighter loaded with general cargo, and the northbound *Cassimir,* a converted tanker laden with molasses, met at sea on the early morning of February 26, 1942. It was dark and there was practically no horizon. Both vessels were going at full speed, a combined twenty-one knot speed, and were proceeding "blacked out" and not displaying any lights whatever, in accordance with United States Naval orders. They were on general routes laid down by the Navy, such routes being designed for maximum protection in a submarine zone, it is to be assumed.

On this approach, nearly head on, they sighted each other ahead a short distance apart and took hard-over helm action which swung the vessels to the westward in the same direction, collision resulting between the stem and port bow of the *Lara* and the amidships starboard side of the *Cassimir.*

(Additional explanatory facts are: On sighting the *Lara* the *Cassimir* put her wheel hard left and switched her navigation lights on, but did not announce her rudder action with any signal; immediately thereafter, the *Lara* on sighting the *Cassimir* ahead, exhibiting white range lights and a green side light and headed across the *Lara's* bow from port to starboard at a slight angle, put her rudder hard right. Before collision the *Lara* sounded the danger

signal and reversed her engines. Just before contact, the *Cassimir* blew several short blasts and the *Lara* switched on her navigation lights.)

The collision occurred only "in excess of one minute and not more than two" after the vessels sighted each other. R. 298; *Finding 20.*

The Proceedings.

This cause embraces the consolidated limitation of liability proceedings of the respective vessel owners. Each owner filed claim for its damages in the other owner's proceeding. The owner of cargo on the *Cassimir* filed claim against the petitioner only. The estates of the deceased crew members of the *Cassimir* filed claims in the proceedings, but these claims were settled before trial by the *Cassimir* owner, under an agreement with the petitioner that such settlements would be considered as part of the damages of the *Cassimir*. A minor injury claim of a *Cassimir* crew member was included in this arrangement.

The Decisions.

The District Court Decision: The petitioner contended in the District Court (and Circuit Court) that at sighting the vessels were *in extremis*, a situation produced by the absence of lights on the vessels, the weather, their courses and speeds. The petitioner asked that the "error *in extremis*" doctrine be applied and, in conformity with this principle, that errors, if any, in the vessels' maneuvers to escape collision should be excused. The District Court held that the collision was caused by the mutual fault of the vessels and that the vessels' actions were not errors *in extremis*. R. 299, 301; *Conclusions* I, X and XI.

The Circuit Court of Appeals' Decision: Only the petitioner appealed. The Circuit Court of Appeals held that the situation was one to which the "error *in extremis*" doctrine applied, as contended by the petitioner, but nevertheless affirmed the District Court decree, with opinion. R. 320-1. Petition for rehearing was denied. R. 327.

The Circuit Court held that the *Lara* in directing her course to her right acted with unsound judgment and that this error amounted to fault, on the Court's interpretation of the "error *in extremis*" doctrine.

We present in the Brief accompanying this petition our argument that the Circuit Court's interpretation of the "error *in extremis*" doctrine, a doctrine of importance in marine collision cases and especially so in cases involving wartime collisions, is erroneous in law and is in conflict with interpretations of the same doctrine made by this Court and by Circuit Courts in other Circuits.

The Questions Presented.

1. Where a vessel is found by a Court to be in an *in extremis* situation, due to suddenly meeting another vessel coming from the opposite direction while both are proceeding full speed without displaying any navigation lights in accordance with Navy orders, may liability be properly imposed on the vessel and her owner for the instantaneous maneuvers taken to escape collision which were not found to be clearly unskilful and were taken by the navigator in the exercise of his judgment as a seaman?

2. Where a vessel without blame on her part is suddenly faced with peril of collision with another and is in a situation held by a Court to fall within the *in extremis* doctrine, is it not immaterial in resolving the question

of liability of the vessel whether wise or unwise judgment was exercised by her navigator in acting to avoid the immediate danger of collision?

3. If the natural result of a Court's interpretation of the "error *in extremis*" doctrine is that only those actions done *in extremis* are to be excused which are judged *not* to be errors, is not such an interpretation a complete departure from the principle announced by this Court in *The City of Paris*, 76 U. S. 634, 638-9, that errors committed *in extremis* are not faults?

4. In considering the conduct of a mariner in a situation of collision peril produced by the extraordinary conditions of wartime navigation, should a Court subject to critical analysis the judgment exercised by the mariner or should it follow the direction of *The Oregon*, 158 U. S. 186, 204, that "* * * the judgment of a competent sailor *in extremis* cannot be impugned"?

5. When a colliding vessel without fault on her part has been suddenly thrust into peril of collision with another, may the vessel's possible responsibility turn on a Court's analysis of whether or not her navigator's immediate action to avoid collision demonstrates *some sound judgment and some clear thinking?*

6. Where two "blacked-out" steamers on a dark night were approaching each other head on, and steamer A wrongly turned left without signaling and switched on her lights and the other, B, not knowing A's mistake, immediately turned right, *in extremis*, having assumed that A would do the same: was it not error to impose partial fault on B for the collision of the vessels because the Court considered it poor judgment for B to turn right when A

was in a position headed to cross B's bow from port to starboard at an acute angle, as indicated by A's lights?

THE REASONS FOR ALLOWANCE OF THE WRIT.

1. The Circuit Court has interpreted an important doctrine of federal collision law in conflict with the interpretations of that doctrine in other Circuits and in this Court. Such interpretation is not an isolated instance. The Circuit Court here has reaffirmed an interpretation it earlier made which is different from that of this Court and the other Circuits.

2. A reversal of the Circuit Court's decision, will, it is believed, serve as an important guide to all admiralty Courts in which are pending collision cases of the same character as the instant case; serving as guide, also, to many owners of colliding vessels in adjusting without litigation the numerous collisions which have occurred in war.

The authoritative resolution of the question in the instant collision, one typical of many such occurrences incident to wartime ship handling, would helpfully define the proper limits of a principle important to the decision of many such wartime collisions.

WHEREFORE, the petitioner respectfully prays for the issuance of a writ of certiorari to review the said Circuit Court's decree.

GRACE LINE INC.,

By ROBERT S. ERSKINE,
Counsel for Petitioner.

EUGENE F. GILLIGAN,
Of Counsel.

New York, N. Y., October 24, 1944.

Supreme Court of the United States

GRACE LINE INC.,
Petitioner,

—*against*—

CUBA DISTILLING COMPANY, INC., and
DEFENSE SUPPLIES CORPORATION,
Respondents.

October Term, 1944.
No. .....

BRIEF OF PETITIONER, GRACE LINE INC., IN SUPPORT OF ITS PETITION FOR WRIT OF CERTIORARI.

FIRST POINT.

THE CIRCUIT COURT DECISION INTERPRETS THE "ERROR *in extremis*" DOCTRINE ERRONEOUSLY AND IN CONFLICT WITH DECISIONS OF THE SUPREME COURT AND OF CIRCUIT COURTS FOR OTHER CIRCUITS.

The collision is described in the petition submitted herewith. *Petition*, pp. 2-3.

Despite the holding of the Circuit Court that the situation fell within the "error *in extremis*" doctrine, the Court concluded concerning the *Lara's* navigation that it could not "excuse her altogether", "whatever measure of lenity we should accord the *Lara*, faced with the sudden apparition of the *Cassimir.*" R. 320. Its opinion plainly shows

that the Court recognized the peril of the vessels and that their initial swift rudder actions were the primary causal factors in the collision.

However, the Circuit Court affirmed that there was fault and liability on the *Lara's* part because it considered that the *Lara's* right rudder action amounted to the exercise of poor judgment.

The Court said:

> "It made the '*Lara's*' navigation the only course sure to bring her into collision. Had she kept on she would probably have gone under the '*Cassimir's*' stern; had she backed, she would almost certainly have done so; had she put her rudder hard left, that result would have become still more assured. It is indeed the instinctive response of a master in an emergency to put his rudder hard right; if both ships do so, the chances of collision are apt to be much reduced. But no emergency will excuse the absence of all clear thinking; after all, men, charged with the responsibilities of command, must not be wholly incapacitated for sound judgment when suddenly thrust into peril." * * * "The situation falls within what we said in *A. H. Bull SS. Company* v. *United States,* 34 Fed. (2d) 614, 616; 'Even *in extremis* * * * some discretion is demanded; the phrase means no more than that less judgment is required in an emergency than when there is time to consider; it does not exculpate all faults; it is no more than a palliative.'" R. 320-1.

In contrast, this Court, in considering legal responsibility with respect to acts committed *in extremis,* has said:

> "Whether they were wise it is not material to inquire. If unwise, they were errors and not faults. In such cases the law in its wisdom gives absolution." *The City of Paris,* 76 U. S. (9 Wall.) 634, 638-9.

This Honorable Court's definition of the doctrine finds similar expression in other decisions of this Court. *The Favorita,* 85 U. S. 598, 603; *The Falcon,* 86 U. S. 75, 78; *The Maggie J. Smith,* 123 U. S. 349, 355; *The Blue Jacket,* 144 U. S. 371, 391-2; *The Ludwig Holberg,* 157 U. S. 60, 70; *The Oregon,* 158 U. S. 186, 204.

This Court, in *The Favorita, supra,* stated, at page 603:

> "It is said if the *Manhassett* had advanced instead of stopping she would have cleared the steamship. This may or may not be true, but if true, she is not in fault for this error of judgment. It was a question whether to advance or to stop and back, and the emergency was so great that there was no time to deliberate upon the choice of modes of escape. In such a moment of sudden danger, caused by the misconduct of the *Favorita,* the law will not hold the pilot of the *Manhassett,* acting in good faith, guilty of a fault, if it should turn out after the event that he chose the wrong means to avoid the collision, unless his seamanship was clearly unskilful. And this we do not find to be the case. On the contrary, if there were error at all, it was such a mistake of judgment as would likely be committed by anyone in similar peril."

Whereas in the instant case the Circuit Court has departed from the doctrine, other Circuit Courts have conformed to the decisions of this Court:

Third Circuit: *United States* vs. *P. F. Martin, et al.,* 1941 A. M. C. 149, 154-155 (otherwise unreported);

Seventh Circuit: *Bigelow* v. *Nickerson,* 70 Fed. 113, 123;

Ninth Circuit: *Rideout* vs. *Charles Nelson Co.,* 55 F. (2d) 783, 786.

The interpretation in the instant case is in effect that a Court is to scrutinize critically the judgment exercised by a navigator faced with immediate danger and impose liability for an act of judgment which it considers one of poor judgment and excuse only an act of judgment which it considers one of good judgment, although either act is an erroneous one. Such acts, of course, do not exhibit any omission to exercise reasonable care, for the finding that they were done *in extremis* necessarily imports that there was no reasonable opportunity to reflect or to deliberate; yet one act of judgment may be absolved and the other fashioned into liability.

Thus, the doctrine as applied by the Circuit Court leaves a party open to respond in damages, not for negligence in its accepted sense but for a non-negligent act of judgment which is assessed as lacking sufficient wisdom or discretion on some indefinable basis. This conception applied to the instant case is the reiteration of the same conception as expressed and requoted by the Court in its earlier decision of *A. H. Bull SS. Company* vs. *United States*, 34 F. (2d) 614, 616.

Uncertainty in this Circuit Court as to the limits of the doctrine appears very clear for it has applied the doctrine in other cases in consonance with this Honorable Court's decisions.* Such vacillation and varying results of litigation in important marine matters to which identical principles are applicable are productive of unnecessary litigation. The principle involved is one to which frequent resort can be expected in the numerous collisions which have occurred under extraordinary wartime conditions of navigation.

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* *The Condor-The Nordpol*, 34 Fed. (2d) 3, 5; *The Coney Island-The Exporter*, 131 Fed. (2d) 904, 905.

SECOND POINT.

THE CIRCUIT COURT IN ERRONEOUSLY UNDERTAKING AN APPRAISAL OF AN ACT OF JUDGMENT *in extremis* ALSO ERRED IN ITS APPRAISAL.

The Court considered that the *Lara's* rudder action was an unsoundly judged act. Whether it was unsoundly judged or soundly judged is immaterial under the correct theory of the doctrine of error *in extremis*. Clearly, the true doctrine would charge as a fault only an act which was very plainly grossly inept or incompetent. That is not the case here. As shown by the Circuit Court's opinion, the act was one which the Court considered was the result of poor judgment.

As we have said, the Court has exhibited a well-defined course of departure from a principle which comes into play in collision cases, very probably with increasing frequency in the volume of wartime collisions. Moreover, the misapplication of this general principle in this particular case illustrates the readiness with which a Court may fall into error when trying to dissect the propriety of a judgment exercised *in extremis*.

The Court obviously judged the situation of danger confronting the *Lara* not from the position of her navigator on the bridge but from the deceptive height of the knowledge of after-events. It was poor judgment, so the Court concluded, for the *Lara* to direct her course to her right for "had she kept on, she would probably have gone under the *Cassimir's* stern; had she backed, she would almost certainly have done so; had she put her rudder hard left, that result would have become still more assured." R. 320.

The *Lara* navigator had only the apparent bearing and heading of the *Cassimir* to guide him. The *Lara* at that

time did not know, and could not know, that the *Cassimir* had put her rudder hard left. The *Cassimir* bore ahead and her lights, white ranges and green side light, showed that she was heading slightly to the *Lara's* right hand side. From the vessels' relative positions the *Lara's* navigator assumed that the *Cassimir* would put her rudder to her right. R. 174-5. This was a correct assumption. If the *Cassimir* was "end on", the statutory rules of navigation* required the *Cassimir* to go to her right. If the *Cassimir* was on a crossing course, she would be the burdened vessel under the statutory rules of navigation** and required to go to her right.

The District Court has confirmed the correctness of this assumption in finding that the *Cassimir* should have put her rudder to her right. R. 300; *Conclusion VII.* The *Cassimir* did not challenge this conclusion and the Circuit Court has not disturbed this finding.

Should the *Lara* be charged with poor judgment, and with fault, for not assuming that the *Cassimir* would do the wrong thing? Only if the *Lara's* navigator assumed that the *Cassimir* would wrongfully put her rudder left, would the *Lara's* right rudder be "the only course sure to bring her into collision."

The Circuit Court, critical of the *Lara's* judgment in going to her right, conceived that it would have been better judgment if collision were to be avoided if the *Lara* had kept on; or backed; or put her rudder hard left. But these measures would have been the one sure way to produce collision if the *Cassimir* had done the right thing and gone to her right. The *Cassimir* instead put her rudder hard left and did the wrong thing. But the *Lara's* navigator

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* Art. 18, International Rules, 33 U. S. C., §103.

** Arts. 19, 22, 23, International Rules, 33 U. S. C., §§104, 107, 108.

had no knowledge of this error of the *Cassimir* at the time the *Lara* went to her right.

Obviously, the Circuit Court's conclusion that the *Lara's* right rudder action was not one of good judgment is based on the Court's acquired knowledge that when this action was taken the *Cassimir* had already mistakenly put her rudder hard left. On the correct premise that this fact was not known to the *Lara's* navigator when he acted, it is clear that the *Lara* acted correctly and with good judgment. So, the Circuit Court erred in its analysis and in so doing exhibited the companion error of misinterpretation of the error *in extremis* doctrine.

The error of law of the Circuit Court appears plain. It is submitted that it is apparent on the face of the Circuit Court's opinion that the Court's assessment of fault against the petitioner is reversible error and that the *Lara* should have been exonerated.

LAST POINT.

A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AS PRAYED FOR IN THE ANNEXED PETITION SHOULD BE GRANTED AND THE DECREE OF THAT COURT SHOULD BE REVERSED.

Respectfully submitted,

ROBERT S. ERSKINE,
Counsel for Petitioner.

EUGENE F. GILLIGAN,
Of Counsel.

New York, N. Y.,
October 24, 1944.

Supreme Court of the United States

OCTOBER TERM—1944

No. 632

GRACE LINE, INC.,

Petitioner,

against

CUBA DISTILLING COMPANY, INC. and DEFENSE SUPPLIES CORPORATION,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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Supreme Court of the United States

OCTOBER TERM—1944

No. 632

GRACE LINE, INC.,

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against

CUBA DISTILLING COMPANY, INC. and DEFENSE SUPPLIES CORPORATION,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

The District Court (HULBERT, *D. J.*) and the Circuit Court of Appeals (LEARNED HAND, SWAN and CLARK, *C. J. J.*) by concurrent findings of fact have held that the petitioner's vessel "Lara" and the steamship "Cassimir" owned by the respondent, Cuba Distilling Company, Inc., were both guilty of faults contributing to the collision between them. The questions presented were pure questions of fact.

In its effort to present to this Court a question of law, the petitioner assumes that the faults of the "Lara" were committed *in extremis*. This assumption is contrary to the findings of the courts below. One of the findings of the District Court was as follows (R. p. 301):

> "XI. The errors of the 'Lara' were not errors *in extremis*."

In a *per curiam* opinion affirming the judgment of the District Court, the Circuit Court of Appeals did not disturb this finding, but merely quoted from one of its earlier decisions to the effect that even *in extremis* a navigator is not wholly relieved from responsibility. Obviously, the question when the situation confronting a navigator becomes so desperate that he ceases to be accountable for his actions is a pure question of fact. Both of the lower courts found that the situation confronting the navigator of the "Lara" was one in which he could and should have averted collision by the exercise of reasonable care and skill (See Fdg. 17, R. p. 297). Moreover, they both found that a proper lookout was not maintained on the "Lara." (Con. VIII 1, R. p. 300; R. p. 321). Failure to keep a good lookout is certainly not a fault which can be excused on the ground that it is committed *in extremis*.

Moreover, the District Court also held the "Lara" at fault because she failed to sound a one blast signal when she put her rudder hard right (Con. VIII 3, R. p. 300) and because she failed to turn on her navigation lights immediately *or at any time until about the moment of contact* (Con. VIII 6, R. p. 300), thereby leaving the "Cassimir" to navigate without adequate knowledge of the proposed or actual movements of the "Lara." Furthermore, the District Court also held the "Lara" at fault because "she continued to turn to the right at full speed and failed to stop or reverse her engines until collision could not be avoided" (Con. VIII 7, R. p. 300). The Circuit Court of Appeals in its *per curiam* opinion did not comment on these additional faults of the "Lara" found by the District Court, evidently considering the case too clear to require further discussion.

There is no conflict in the decisions cited in the petitioner's brief relating to faults committed *in extremis*. Every

case involving this principle must depend upon its own facts and circumstances. The four judges who have considered the testimony in this case have unanimously held that the facts and circumstances of this collision were not in fact such as to excuse the plain and gross faults of the "Lara," and certainly not such as to excuse "the absence of all clear thinking" on the part of the officer in charge of her navigation (R. p. 320).

The petition for a writ of certiorari to the Circuit Court of Appeals for the Second Circuit to review the decisions below in this case should be denied.

Respectfully submitted,

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(19)

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 632.

GRACE LINE INC.,

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against

CUBA DISTILLING COMPANY, INC., and DEFENSE SUPPLIES CORPORATION,

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REPLY BRIEF FOR PETITIONER.

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Supreme Court of the United States

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REPLY BRIEF FOR PETITIONER.

The matter involved as represented by respondents' answering brief is unrecognizable upon comparison with that actually presented by the Circuit Court's opinion. One would suppose from a reading of the answering brief that the matter involved fact determinations. Quite the contrary, the Circuit Court opinion clearly projects only law questions for review, as set forth in the petition. A short review of respondents' brief is necessary to correct the serious misconceptions set forth.

The respondents state that the Circuit Court did not find that the *Lara* acted *in extremis*. That statement is contradicted by the plain language of the Circuit Court's opinion.

The Circuit Court considered the " * measure of lenity we should accord the '*Lara*,' faced with the sudden apparition of the '*Cassimir*,' * * " (R. 320) and concluded that "The situation falls within what we said in *A. H. Bull SS. Company* v. *United States*, 34 Fed. (2) 614, 616; 'Even in

extremis * * * some discretion is demanded; * * *". R. 321.

That language also plainly exposes the incorrectness of respondents' statement that petitioner *assumed* that *Lara* acted *in extremis* "in its effort to present to this Court a question of law."

Respondents also make the unsupportable statement that the District Court "finding" that "the errors of the *Lara* were not errors *in extremis*" was not disturbed by the Circuit Court. This District Court law conclusion (R. 301; Conclusion of Law XI) was overruled by the Circuit Court by its holding that the situation was an *in extremis* situation. R. 321.

The petitioner's basis of appeal in the Circuit Court was that, on the facts found, the lower court erred in not concluding that the situation was governed by the law of *in extremis*. The Circuit Court upheld that contention, but misinterpreted the principle of error *in extremis* in a fashion that entirely destroys its meaning. This error of law alone is the basis of the petition here, together with the reasons set forth in the petition and supporting brief.

Respondents also refer, irrelevantly, to District Court conclusions that *Lara* was guilty of other faults following upon her rudder maneuver. The District Court had held that these alleged faults were not errors *in extremis*. But the Circuit Court's short opinion shows that the Circuit Court regarded *Lara's* rudder maneuver as her major contribution to the collision and an act *in extremis*. Other subsequent acts or omissions, even if errors, likewise could only have been *in extremis*. It follows that only questions of law are presented because the Circuit Court applied the

principle of *error in extremis* in a way in conflict with the decisions of this Court and other Circuit Courts.

The respondents also state that both Courts "found that a proper lookout was not maintained on the *Lara.*" There is absolutely nothing in the decision of either Court remotely suggesting that the *Lara* was brought to her situation of *extremis,* confronted by the *Cassimir,* through improper lookout on *Lara's* part. (See R. 287-8, fols. 861-3; R. 294-6, Findings 6, 11, 14; R. 320-1.) The respondents' reference to the Circuit Court's opinion (R. 321) does not support their assertion.

The Circuit Court, weighing *Lara's* judgment *in extremis,* charged her only with the fact of *Cassimir's* actual *heading* which the *Lara's* lookout saw and which the Circuit Court considered it was fair to suppose "that the officer in charge did not see." R. 321. *Lara's* evidence showed, and she has never disputed, that when she acted the *Cassimir* was heading across her bow, as found. There is no question of proper lookout. The opinion presents no questions except those raised by the Circuit Court's error in law in passing on the wisdom of the judgment exercised by a vessel *in extremis.*

Finally, bearing on the conflict of decisions set forth in petitioner's brief, the respondents admit that the decisions cited by the petitioner relating to faults committed *in extremis* are uniform. (Respondents' Brief, p. 2, last paragraph.) They do not dispute petitioner's contention that the cited decisions are in conflict with the decision in the instant case and with the decision of the same Court on which the Circuit Court bases its holding in the instant case.

Respondents do not contend that there was any error in the Circuit Court's decision that the *Lara* acted *in*

extremis and they do not dispute either that the Circuit Court's decision is in conflict with decisions of this Court and of other Circuit Courts or that the question involved is one of importance in maritime law.

Therefore, it is submitted that the respondents have not offered any objection in law or any valid challenge to the granting of the petition and that certiorari should be granted to review the Circuit Court's decree.

Respectfully submitted,

ROBERT S. ERSKINE,
Counsel for Petitioner.

EUGENE F. GILLIGAN,
Of Counsel.

New York, N. Y.
November 6, 1944.